



Virginia  
Regulatory  
Town Hall

[townhall.virginia.gov](http://townhall.virginia.gov)

## Fast Track Proposed Regulation Agency Background Document

<b>Agency name</b>	Department of Medical Assistance Services
<b>Virginia Administrative Code (VAC) citation</b>	12 VAC 30-50 and 30-120
<b>Regulation title</b>	Program of All-Inclusive Care for the Elderly (PACE)
<b>Action title</b>	PACE to State Plan
<b>Date this document prepared</b>	

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.*

On January 1, 2007, the Centers for Medicare and Medicaid (CMS) approved a Medicaid State Plan Amendment that makes PACE an optional service under the State Plan rather than a waiver service. The PACE regulations are being moved from the waiver services section of the Department of Medical Assistance Services' (DMAS') regulations to the State Plan for Medical Assistance Services section. This means that there is a contract between the state and CMS whereby the Commonwealth agrees to administer the PACE Program as an optional Medicaid benefit. The PACE regulations are currently in the waiver services section of DMAS' regulations (12VAC30-120), but need to be moved to 12VAC30-50 to make the regulations consistent with the Department's agreement with CMS.

### Statement of final agency action

*Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.*

I hereby approve the foregoing Agency Background Document with the attached regulations Program of All-Inclusive Care for the Elderly (12VAC30-120-xx, *et seq.* and 12 VAC 30-50, *et seq.*) and adopt the action stated therein. I certify that this final regulatory action has completed all the requirements of the Code of Virginia § 2.2-4012.1, of the Administrative Process Act and is full, true, and correctly dated.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Patrick W. Finnerty, Director  
Dept. of Medical Assistance Services

**Legal basis**

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.*

The *Code of Virginia* (1950) as amended, § 32.1-325, grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. The *Code of Virginia* (1950) as amended, § 32.1-324, authorizes the Director of DMAS to administer and amend the Plan for Medical Assistance according to the Board's requirements. The Medicaid authority as established by § 1902 (a) of the *Social Security Act* [42 U.S.C. 1396a] provides governing authority for payments for services.

**Purpose**

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

The amended regulation is required in order to meet CMS' requirements to have the PACE program categorized as a State Plan optional service and not a waiver service. These regulations must be promulgated to accomplish this action.

The purpose of PACE is to provide a community-based alternative to nursing facility care that integrates primary and long-term care services within Medicaid, but excludes Medicare financing and services. Sentara Senior Community Care, a pre-PACE provider in the Tidewater area, served 122 enrolled participants in FY 06 at a cost of \$3.4 million for an average of approximately \$27,655 per person. PACE combines Medicaid and Medicare funding to provide all medical, social, and long-term care services through an adult day health care center (ADHC). The pre-PACE and PACE

programs allows elders to remain in familiar surroundings, maintain self-sufficiency, and preserve the highest level of physical, social, and cognitive function and independence. A nursing facility preadmission screening team must authorize PACE services. In order to continue the PACE program DMAS must move the PACE regulations out of the waiver services section of the Virginia Administrative Code and into the State Plan services section of the Administrative Code.

**Rationale for using fast track process**

*Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?*

*Please note: If an objection to the use of the fast-track process is received within the 60-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.*

The fast-track regulatory process is required in order to bring the PACE regulation into compliance with DMAS’ approved State Plan Amendment. Except as noted for 12 VAC 30-120-67 below, no language is being substantively amended; technical and grammatical changes are being recommended in four places as discussed below. The primary intent of the proposed action is to move the PACE regulation from the waiver section of DMAS regulations to the State Plan section.

**Substance**

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the “Detail of changes” section.)*

Except as noted for 12 VAC 30-120-67 below, no substantive changes are being made to the PACE regulations; they are merely being moved from 12VAC30-120-61 through 68 (waiver section of Medicaid regulations) to 12VAC30-50-35 through 12 VAC 30-50-65 (State Plan section).

Four technical changes are being recommended:

- In the “Definitions” section (12VAC30-10-1010), “all” is added to the “capitation rate” definition to clarify that all necessary services are provided to PACE participants within the negotiated monthly per capita amount. This is the original intent and is clearly stated in the Request for Proposals.
- In the “Definitions” section, “by” is added to the definition for the “PACE plan feasibility study” to correct a grammatical error.

- Also in the “Definitions” section, “provider” is defined. The definition is taken from other existing waiver regulations and was inadvertently omitted.
- In response to a request by the Centers for Medicare and Medicaid (CMS), in the “General PACE Plan Requirements” section at 12VAC30-10-1020, “prior to the beginning of employment” is added to the existing requirement for the criminal record check process for providers and employers. This clarifies the intent of the existing language and brings the regulation into compliance with CMS requirements.

## Issues

*Please identify the issues associated with the proposed regulatory action, including:*

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
  - 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
  - 3) other pertinent matters of interest to the regulated community, government officials, and the public.*
- If there are no disadvantages to the public or the Commonwealth, please indicate.*

The movement of this regulation is to maintain Department efforts to improve the infrastructure for community-based long-term support services by making the PACE regulation a State Plan option, allowing the State additional flexibility within the program. The PACE program creates a system of long-term services and supports that enables the elderly to remain in the community rather than in a more costly and less restrictive institutional setting.

This proposal supports Virginia’s implementation of the Olmstead decision and complements the efforts of the recently awarded Systems Transformation Grant and Money Follows the Person Demonstration that both intend to improve the infrastructure for community-based long-term support services.

There are no disadvantages to the public or the Commonwealth.

This proposed regulatory action will have a positive impact on families in allowing individuals facing institutional placement an additional home and community based option.

## Requirements more restrictive than federal

*Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.*

This regulation has no language that is more restrictive than applicable federal requirements.

**Localities particularly affected**

*Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.*

There are no localities that would be particularly affected by the proposed action

**Regulatory flexibility analysis**

*Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.*

There is no adverse impact on small businesses.

**Economic impact**

*Please identify the anticipated economic impact of the proposed regulation.*

<b>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</b>	There are no costs to the state to implement this regulation.
<b>Projected cost of the regulation on localities</b>	None.
<b>Description of the individuals, businesses or other entities likely to be affected by the regulation</b>	PACE providers and recipients and their families.
<b>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected.</b> Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	In FY 2006, the Sentara Senior Community Care pre-PACE in Tidewater served 122 enrollees.
<b>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</b>	None.

**Alternatives**

*Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.*

There are no alternatives; this action is required to bring DMAS’ regulations into compliance with CMS action.

**Family impact**

*Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

This regulatory action will not have any negative affects on the institution of the family or family stability. It will not encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, or one’s children; nor will it strengthen or erode the marital commitment.

**Detail of changes**

*Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.*

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change and rationale</b>
12VAC30-50-320		States that Virginia has <b>not</b> entered into PACE agreements	Removes not to reflect that DMAS now has PACE program agreements in operation
12VAC30-	12VAC30-	Definitions.	“All” is added to the “capitation rate”

120-61	50-330		<p>definition to clarify that all necessary services are provided to PACE participants within the negotiated monthly per capita amount. This is the original intent and is clearly stated in the Request for Proposals.</p> <p>“By” is added to the definition for the “PACE plan feasibility study” to correct a grammatical error.</p> <p>“Provider” is defined. The definition is taken from other existing waiver regulations and was inadvertently omitted.</p> <p>No other changes in language were made in this section. The section moved from 12VAC30-120 to 12VAC30-10.</p>
12VAC30-120-62	12VAC30-50-335	General PACE plan requirements.	<p>“Prior to the beginning of employment” is added to the existing requirement for the criminal record check process for providers and employers to meet CMS requirements. No other change in language is made. The section is moved from 12VAC30-120 to 12VAC30-10.</p>
12VAC30-120-63	12VAC30-50-340	Criteria for PACE enrollment.	<p>No change in language; section moved from 12VAC30-120 to 12VAC30-10.</p>
12VAC30-120-64	12VAC30-50-345	PACE enrollee rights.	<p>No change in language; section moved from 12VAC30-120 to 12VAC30-10.</p>
12VAC30-120-65	12VAC30-50-350	PACE enrollee responsibilities.	<p>No change in language; section moved from 12VAC30-120 to 12VAC30-10.</p>
12VAC30-120-66	12VAC30-50-355	PACE plan contract standards and requirements.	<p>No change in language; section moved from 12VAC30-120 to 12VAC30-10.</p>
12VAC30-120-67		PACE catastrophic coverage limitations	<p>This Section repealed and not reiterated in 12 VAC 30-50 as it is no longer a valid limitation</p>
12VAC30-120-68	12VAC30-50-360	PACE sanctions.	<p>No change in language; section moved from 12VAC30-120 to 12VAC30-10.</p>